

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

DIANNA PAIGE SAUNDERS

PLAINTIFF

v.

2:05CV00219-WRW

**WILDER BROTHERS SAWMILL, INC.,
BOBBY D. DAVIS and LEN PITTS**

DEFENDANTS

CERTIFICATION ORDER

Based on Rule 6-8 of the Rules of the Supreme Court of the State of Arkansas, this Court certifies to the Supreme Court of Arkansas a question of law that may be determinative of a major issue in this case (and it appears that the same issue is pending in several circuit courts in Arkansas).

I. QUESTION OF LAW TO BE ANSWERED

Does Ark. Code Ann. § 16-55-212(b) violate the Arkansas Constitution?

II. FACTS RELEVANT TO THE QUESTION

Plaintiff Dianna Saunders is a resident of Clarendon, Monroe County, Arkansas.

Defendant Wilder Brothers Sawmill is a foreign corporation authorized to conduct business in the State of Arkansas. Defendants Davis and Pitts are both residents of Pontotoc, Pontotoc County, Mississippi. At all relevant times, Defendants Davis and Pitts were employees or agents of Wilder and were acting in the scope of their employment or agency.

On September 15, 2004, Plaintiff was driving a 1995 Cadillac El Dorado south on Highway 71, outside the city limits of Clarendon, Arkansas. Plaintiff reduced her speed as she neared a burning rice field adjacent to the highway. Plaintiff stopped near a Monroe County Sheriff's Deputy who was positioned to the north of the field. The Deputy motioned for Plaintiff

to continue, which she did. Plaintiff was not aware that two log trucks had already driven into the smoke, also traveling south. Defendant Pitts drove the log truck that entered the smoke first, followed by the log truck driven by Defendant Davis. Defendant Wilder Brothers Sawmill owned both log trucks.

Defendant Davis stopped in the middle of the roadway, but allegedly did not turn on his emergency lights or put out a reflective triangle. Plaintiff ran into the back of Defendant Davis's log truck. Because of the collision, Plaintiff's car caught on fire. She was trapped in her car and had to be rescued. Plaintiff was then transported by ambulance to Stuttgart Hospital in Stuttgart, Arkansas. Plaintiff alleges that Defendants Pitts, Davis, and Wilder Brothers Sawmill were negligent. Plaintiff seeks to recover compensatory damages for medical expenses, past and future, and other out of pocket expenses relating to medical treatment; damages for medical care, past and present; damages for pain and suffering, past and future; damages for emotional distress, past and future; damages for any scars and disfigurement and visible results of her injury; damages for modifications to her home to facilitate her medical equipment; damages for the expense of caretaking in her home; damages for the loss of earnings, past and future; damages for the loss of earnings capacity; damages for the permanent nature of her injuries; and other damages.

The issue of whether Ark. Code Ann. § 16-55-212(b) violates the Arkansas Constitution is likely to arise repeatedly in federal diversity cases, as well as in Arkansas circuit court cases. While the Arkansas Supreme Court has been presented with this issue, the Court found the issue moot and declined to rule on the question;¹ there is no precedent from the Arkansas Supreme

¹See *Shipp v. Franklin*, No. 07-22, 2007 Ark. Lexis 373, at *10 (Ark. June 14, 2007).

Court on this issue. Judges in the United States District Courts have reached different conclusions on the issue.²

III. REFORMULATION OF THE QUESTION

The United States District Court hereby acknowledges that the Arkansas Supreme Court, acting as the receiving court, may reformulate the question presented.

IV. COUNSEL OF RECORD AND PARTIES

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V.

The Clerk of the Court is hereby directed to forward this Order, and a copy of the Order

²See *Perry v. Ethicon, Inc.*, No. 4:05CV567GH, 2006 U.S. Dist. Lexis 86127, at *4 (E.D. Ark. Nov. 27, 2006) (finding the provision constitutional); but see *McMullin v. United States*, No. 3:06CV00172GTE, 2007 U.S. Dist. Lexis 67603, at *10 (E.D. Ark. Sept. 12, 2007) (holding that the Arkansas Supreme Court would find the collateral source rule applies to the case under consideration, as it is primarily a rule of substantial justice) and *Saunders v. Wilder Bro's. Sawmill, Inc.*, No. 2:05-CV-00219-WRW (E.D. Ark. filed Sept. 2, 2005), Doc. No. 89 (finding Ark. Code Ann. § 16-55-212(b) unconstitutional), a copy of which is attached to this Order.

(Doc. No. 89) entered on November 27, 2007, to the Supreme Court of Arkansas under his official seal.

IT IS SO ORDERED this 28th day of November, 2007.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE